

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DIEGO FELIX,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

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CIVIL NO. 3:CV-08-2025

(Judge Caputo)

O R D E R

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On November 7, 2008, Diego Felix, an inmate at USP-Allenwood, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging his conviction. (Doc. 1.) On November 7, 2008, the Clerk of Court sent Petitioner an Administrative Order directing, that within thirty (30) days, he was to either pay the statutory filing fee of \$5.00 or file a properly completed application to proceed *in forma pauperis*. (Doc. 3.) On December 18, 2008, after the requisite period passed and the Clerk's Office did not receive either the filing fee or an application to proceed *in forma pauperis* from Mr. Felix, the Petition was dismissed without prejudice. (Doc. 4.) The Clerk of Court received the requisite \$5.00 filing fee on December 24, 2008. (Doc. 5.) Presently before the Court is Mr. Felix's Motion to Vacate this Court's November 7, 2008, Order terminating his case noting that he has no control over the speed with which the Bureau of Prisons processed his request to send the Court the filing fee on his behalf. (Doc. 6.) The Court finds merit to Mr. Felix's argument and will grant the motion.

In reviewing Mr. Felix's habeas corpus petition, while clear that he is challenging his conviction for conspiracy to distribute and possess with intent to distribute a controlled substance, what is not clear is where he was convicted. The date and court of conviction is basic information this Court, and the Respondent, will need to properly evaluate Mr. Felix's claim. Therefore, Diego Felix will be given the opportunity to file an Amended Petition for Writ of Habeas Corpus.

Finally, Mr. Felix is advised that the appropriate Respondent in a habeas corpus petition is the official having custody of the applicant. See Rule 2 of the Rules Governing Section 2254 Cases In The United States District Courts, 28 U.S.C. foll. § 2254, made applicable to § 2241 petitions by Rule 1(b) thereof. In this case the proper respondent is the Warden at USP-Allenwood.

AND NOW, this 18th day of **AUGUST, 2009**, it is ordered that:

1. Petitioner's Motion to Vacate (doc. 6) is **GRANTED**.
2. This Court's Order of December 18, 2008, (doc. 4) is **VACATED**.
3. Petitioner shall file an amended petition setting forth his court of conviction and the procedural history of any appeals or collateral attacks he has filed challenging his present sentence or conviction.
4. The Clerk of Court is directed to provide Petitioner with two blank § 2241 forms for his use in preparing an Amended Petition.
5. If Petitioner fails to file an Amended Petition within twenty (20) days of the date of this Order, the Petition will be dismissed without prejudice.

/s/ A. Richard Caputo
A. RICHARD CAPUTO
United States District Judge